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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------------|------------------|
| 10/714,365 | 11/14/2003 | Stephen A. Yencho | 148 | 1868 |
| 7590 | 08/17/2004 | | EXAMINER JACKSON, SUZETTE JAMIE | |
| Brian A. Schar Chief Patent Counsel Cardica, Inc. 900 Saginaw Drive Redwood City, CA 94063 | | | ART UNIT | PAPER NUMBER |
| | | | 3738 | |

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,365

Applicant(s)

YENCHO ET AL.

Examiner

Suzette J Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/14/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Bolduc et al. 2003/0153933. Bolduc et al. discloses the invention as claimed noting figures 16-20, 24-30 comprising: *A system for performing anastomosis between a graft vessel and a target vessel each having a lumen there through, where an opening is present in the wall of the target vessel comprising: an inner element (80) connectable to the graft vessel (T1, T2) wherein at least a portion of the inner element is deformable from a first configuration to a second configuration and deformable back to said first configuration from the second configuration wherein the second configuration allows at least a portion of the inner element to enter the opening in the target vessel (see [0065]); further having an outer element (54) configured to engage said inner element to hold a portion of the graft vessel and a portion of the target vessel there between; wherein the outer element directly engages the inner element; wherein the inner element includes a curved first*

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surface (82) and the outer element includes a correspondingly-curved second surface (78), wherein an end of the graft vessel is compressed between the curved first surface of the inner element and the curved second surface of the outer element; wherein the curved first surface and the curved second surface each have a substantially constant radius of curvature along their lengths; wherein at least one of the inner element and outer element is superelastic composed of at least partially of nitinol [0065]; wherein the inner element includes at least one interlocking member; wherein the outer element includes at least one interlocking member[0076]. The intended use recitation/functional language of the article claims carries no patentable weight in the absence of any distinguishing structure. Bolduc et al. clearly discloses the structure as claimed and is found to be inherently capable of performing the functions.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gittings et al. 6,517,558; Spence et al. 6,488,692 ; Sharkey et al. 5,540,701 ; Spence et al. 2003/0153932 ; Vargas et al. 2003/0109893 ; Blatter et al. 2002/0058955 ; Suyker et al. 6,485,496 all show related material.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 703-308-6516.

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5. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

6. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

A handwritten signature in black ink, appearing to read 'Suzette J. Jackson', with a long, sweeping horizontal flourish extending to the right.

Suzette J. Jackson
12 August 2004